

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GENE LOMBARD : CIVIL ACTION
: :
v. : :
: :
EDWARD KLEM, et al. : NO. 07-2650

MEMORANDUM AND ORDER

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE

February 11, 2008

In response to Lombard's petition for habeas corpus, the District Attorney filed a Motion to Dismiss the Petition, presenting two arguments in support of his request. First, the District Attorney argued that Lombard was a fugitive. Thus, pursuant to the doctrine of fugitive disentitlement, the District Attorney sought dismissal of the habeas petition. Second, the District Attorney sought dismissal based on Lombard's failure to prosecute the case. The District Attorney has now sought to withdraw the motion to the extent the request was based on Lombard's fugitive status. For the reasons that follow, I will grant the District Attorney's Motion to Withdraw the Fugitive Basis for Dismissal, (Doc. 15). I will also order the Petitioner to contact this court to update his address and notify the court whether he wishes to proceed with his petition in light of his changed circumstances.

In March of 1999, Lombard was convicted in the Philadelphia Court of Common Pleas of aggravated and simple assault, possession of an instrument of crime, and recklessly endangering another person. He was sentenced to 48 - 96 months of incarceration plus 2 years of probation, consecutive to the incarceration. On June 25,

2007, Lombard filed a petition for habeas corpus in this court. On July 10, 2007, Lombard was released from state custody directly to federal authorities from the United States Department of Homeland Security/Immigration and Customs Enforcement (ICE). He is now in ICE custody at the York County Prison.

Unfortunately, the information available to both the District Attorney and the Court at the time of the District Attorney's Motion to Dismiss indicated that Lombard had been released from prison to the street. Because Lombard had not reported to the Probation Department to begin serving the two year probationary term of his sentence, the District Attorney believed that Lombard was a fugitive, and sought dismissal of his petition on that basis. With the assistance of the Probation Department, the District Attorney recently located Lombard at the York County Prison.

Having discovered the true nature of Lombard's release from state custody, the District Attorney now seeks to withdraw the fugitive basis for the Motion to Dismiss. Based on these facts, I will grant the Motion to Withdraw the Fugitive Basis for Dismissal. The court appreciates the District Attorney's efforts in locating Lombard and candor with the court in his efforts.

I am left with Lombard's failure to participate in the prosecution of his petition. "It is the duty of a *pro se* litigant to inform the court and his adversaries when his address changes; a failure to do so will justify dismissal." Ali v. Hilton Gateway, 2007 WL 121453 at *2 (D.N.J. Jan. 10, 2007) (citing Burns v. Glick, 158 F.R.D. 354, 356

(E.D. Pa.1994)). However, because of his release from state custody, all mail sent to Lombard at the State Correctional Institution at Mahanoy has been returned. Thus, Lombard is not even aware of the District Attorney's Motion to Dismiss the Petition. Therefore, I will order the Clerk of Court to send a copy of this Memorandum, along with all of the papers that have been filed in Lombard's habeas case, to Lombard at York County Prison. I will afford Lombard thirty days in which to officially notify the Clerk of Court of his change of address and advise this court whether he wishes to proceed with the prosecution of his habeas petition. Failure to do so will result in my recommendation that the petition be dismissed.

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O R D E R

AND NOW, this 11th day of February, 2008, upon consideration of the Respondents' Motion to Dismiss the Petition for Writ of Habeas Corpus, (Doc. 14), the Respondents' Motion to Withdraw Fugitive Basis for Dismissal, (Doc. 15), and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion to Withdraw Fugitive Basis for Dismissal is GRANTED. The court will consider the District Attorney's Motion to Dismiss the Petition for Habeas Corpus on the basis of the failure to prosecute only.

Additionally, the Clerk of Court shall forward a copy of the docket entries, the petition, this Memorandum and Order, the Motion to Dismiss the Petition for Writ of Habeas Corpus, and the Motion to Withdraw Fugitive Basis for Dismissal to Gene Lombard, A#36 470 043, Inmate # 105831, York County Prison, 3400 Concord Road, York, PA 17402.

IT IS FURTHER ORDERED that, no later than March 12, 2008, Petitioner shall officially notify the Clerk of Court of his change of address and advise the Court if he wishes to proceed with his habeas petition. A failure to do so will result in a recommendation that the habeas petition be dismissed for failure to prosecute.

BY THE COURT:

/s/Elizabeth T. Hey

ELIZABETH T. HEY
UNITED STATES MAGISTRATE JUDGE